and not an argument in support of the proposition that the market value of the rental of S.R. in 1962 was $1,200 per annum. On the contrary. it would appear that the market value of the rental was much higher than $1,200.

The respondents had given much thought and time to planning a scheme, which no doubt they honestly believed that they were entitled to put into effect as a legal right, whereby they hoped to obtain substantial reduction of tax in respect of the income derived from S.R. which they were about to acquire. The scheme was as already stated hereinbefore to acquire a 'tax loss' company and lease the estate to it. In such circumstances it would be natural to lease the estate at a low rental so that the tax would fall as lightly as possible on the respondents and at the same time enable K.P.M. to make the greatest possible gain for the respondents by not only paying a small rental on the lease but also by obtaining tax relief under section 33(2)(a) and (b).

Another reason why the lease should be regarded as artificial is, that in the normal course of business or trade, no one would give on lease, a well-managed and good yielding estate unless it is proposed at the expiration of the lease to replant the whole of the estate at once or to change the nature of the crop. But according to the report of the manager at page 282 of the record (Exh. G) it would appear that the recommendation is to replant only about half the area of a 45 acre block in S.R. in 1966 when the lease would be about to expire.

When one considers the nature of the transaction as a whole, beginning with the purchase of the shares of K.P.M. on the verge of liquidation, and incurring a loss of $1,233 on the deal, and ending up with the lease of S.R. at a rental of $1,200 per annum, it appears to be a transaction wholly outside the normal course of trade and therefore artificial. As was said by Pennycuick J. in *Ridges Securities Ltd.* v. *Inland Revenue Commissioners*: [7]

"No doubt where one finds an arm's length purchase and an arm's length sale with a dividend strip interposed, these transactions are to be treated as in the course of the trade of a dealer; but where, as here, the transactions as planned from their inception include a transaction which is not in accordance with the normal usage of the trade — i.e., a sale at much less than the market value — the commissioners are, I think, fully justified in treating the transactions as a whole as not being in the course of trade."

Taking all the facts and circumstances of this case into consideration, I am of the opinion, that the lease of S.R. at a rental of $1,200 per annum is not a transaction in the ordinary course of business and therefore the transaction is artificial within the meaning of section 29 of the Ordinance.

I will therefore allow the appeal with costs to the appellant here as well as in the court below.

Barakbah L.P. and **Ismail Khan J.** concurred.

Appeal allowed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

NANYANG INSURANCE CO. LTD. v. SALBIAH & ANOR.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and MacIntyre J.) September 5, 1966]

[K.L. — Federal Court Civil Appeal No. X18 of 1966]

Negligence — Claim against insurers — Whether driver of motor vehicle was driving with consent of the insured.

Insurance — Motor insurance — Motor car transferred under agreement for sale — Insurable interest.

This was an appeal against the judgment of the High Court ([1966] 2 M.L.J. 16) under which the appellants as authorized insurers were ordered to pay to the respondents the amount of damages and costs obtained by the respondents against the driver of a motor car. The facts were that the car had been bought by one Lau Teck Siew and it was registered and insured in his name. An agreement was made for the sale of the car to one Abdul Karim and an agreement was entered into with him. This provided for the payment of an instalment of $1,000 but as Abdul Karim was unable to pay this, it was further orally agreed that Abdul Karim should pay this by instalments. It was the intention that the car should be lent to Abdul Karim until he had paid up the instalments and then a hire-purchase agreement would be entered into with a finance company. The accident took place while Abdul Karim was driving the car. On appeal it was argued that Lau Teck Siew had no insurable interest in the car and that Abdul Karim had driven the car with the consent of the insured.

Held: on the facts the appellants had an insurable interest in the car on the date of the accident and the car was being driven by Abdul Karim with the permission of the insured and therefore the finding of the trial judge was correct and the appeal must be dismissed.

FEDERAL COURT.

W. H. Sault for the appellants.

H. E. Cashin for the respondents.

Cur. Adv. Vult.

Azmi C.J. (Malaya): This is an appeal against the judgment of the High Court at Malacca under which the appellants as authorised insurers were ordered to pay to the respondents a sum of $2,777.55 being a judgment, including costs, obtained by the respondents against one Abdul Karim bin Mohamed Nor alias Hashim bin Mohamed Nor, in reference to the negligent driving of a motor car No. SR. 4805 by the said Abdul Karim.

There were several grounds of appeal, but after objections made by Mr. Cashin for the respondents to the other grounds Mr. Sault proceeded on the following two grounds only:—

"The learned trial judge ought to have held in any event that Lau Teck Siew had no insurable interest in the driving of the insured car No. SR. 4805 by Karim bin

Mohamed Nor who was alleged to have driven with Lau Teck Siew's consent but not as his servant or agent.

The learned judge was wrong in law in holding that the said agreement was an agreement to sell or a conditional contract of sale or any incipient hire-purchase agreement."

The learned trial judge in his judgment says:

"In view of what I have stated above and in view of the fact that the Trading Company regarded themselves as the owners of the car until they transferred it to the finance company with whom Karim was brought willy-nilly into a contract of hire-purchase, Lau Teck Siew had an insurable interest in the car on the date of the accident and the car was being driven by Karim on the implied order or with the implied consent and permission of Lau Teck Siew. The defendants are therefor liable under their contract of insurance."

The facts of this case show that the motor car SR. 4805 was originally bought in Singapore by Lau Teck Siew on behalf of Sin Thye Hin Trading Co. of which the said Lau Teck Siew was a partner. Following the practice of the company, the car was registered in the name of Lau Teck Siew and was subsequently sent to the company's office at Malacca for the purpose of a sale.

At the trial the respondent did not give or call any evidence and all the witnesses in this suit were called by the appellants.

According to the local manager at Malacca, P.W.3 Ng Kah Chee, the car was sold to Abdul Karim bin Mat Nor, alias Hashim bin Mat Nor whom I shall refer after this as Abdul Karim, on 9th February, 1961.

On that date agreement D.6 was signed by Abdul Karim and Mr. Ng on behalf of the company. The agreement reads as follows:

"Agreement made this 9th day of February 1961 between .... (hereinafter called the vendor) and Mr. Karim bin Mat Nor (hereinafter called the purchaser) That the vendor agreed to sell and the purchaser agreed to purchase Opel Rekord Car No. SR. 4805 model 1956 insurance expires on .... for the sum of dollars three thousand four hundred ($3,400).

The first to be paid by the purchaser the sum of dollars one thousand only ($1,000) as deposit on delivery will be paid of the car and the balance of dollars two thousand four hundred on or before 30.2.61.

In the event of the purcraser's failing to pay the balance, the vendor shall have the right to seize the car and forfeit the deposit paid by the purchaser.

The purchaser shall be responsible for any accident or summons during the time the car is in his custody."

It would be seen from this document that the price of the car was fixed at $3,400 and it is also provided in the agreement that Abdul Karim has to pay a deposit of $1,000 and that the balance to be paid at the end of the same month.

According to Abdul Karim, what happened was that he paid $200 the same day and that it was agreed that he has to pay $137.50 monthly thereafter for six months. It would be seen that the total of these payments together with the initial payment of $200 would come to $1,025. Abdul Karim unfortunately could not tell the court what documents he signed and why, but from the evidence of Ng Kah Chee it is apparent that Abdul Karim did not pay the $1,000 down as agreed in Exhibit D.6, and that he was allowed to pay this so-called initial payment in instalments in the manner I have stated.

Ng explained in his evidence as follows:

"When the intending purchaser does not have one-third of the purchase price we have to do something different because the finance company insists on one-third of the price being paid. Then we enter into an agreement like D.6 with the purchaser. We remain the owners under this agreement until the full 1/3 price is received and agreement like D.7 is signed. We do not hand over to the purchaser the insurance or the registration card with the signed transfer forms. Before the proper hire purchase agreement is entered into by the finance company we use agreements such as D.6. D.6 is in fact a temporary hire purchase agreement."

What happened in fact in my view was that in addition to the signing of D.6 and because Abdul Karim was unable to pay the initial payment of $1,000 both parties further agreed orally that Abdul Karim should pay the initial payment by instalments. In other words, there was a distinct subsequent oral agreement modifying Exhibit D.6. At the trial there is a record to the effect that Mr. K. Sellar for the appellant, objected to the evidence altering the terms of D.6. Apparently, the judge rejected the objection and in my opinion — correctly, in view of the proviso (d) to section 92 of the Evidence Ordinance. Section 92(d) reads as follows:—

"When the terms of any such contract grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91 of this Ordinance, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms:

Provided that —

x x x x x x x

(d) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract grant or disposition of such property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents;"

Mr. Cashin also read to us section 19 of the Sale of Goods Ordinance, 1957. Section 19 is as follows:

"19 (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears the rules

contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the the property in the goods is to pass to the buyer."

It is therefore quite clear in my view from the evidence, that the company intended to retain the property in the car until Abdul Karim has paid in full the initial payment of $1,000 under D.6 when he could execute a hire-purchase agreement with a financial company. This is confirmed by what Lau Teck Siew stated in paragraph (e) of his letter to the respondents' solicitors dated 19th July 1962 when he said:

"The car was lent to Mr. Hashim bin Mat Nor (i.e. Abdul Karim) on my permission on 7.3.61."

For the above reason, I would therefore with respect, agree with the finding of the trial judge that the appellants had an insurable interest in the car on the date of the accident and the car was being driven by Abdul Karim with the permission of the insured. I would therefore dismiss the appeal with costs.

MacIntyre J.: I have had the advantage of reading the judgment of the Chief Justice in this appeal and I am in entire agreement with it.

Barakbah L.P. concurred.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; Murphy & Dunbar.*

MOHAMED v. KUNJI MOHIDIN

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and MacIntyre J.) September 5, 1966]

[K.L. — Federal Court Civil Appeal No. X21 of 1966]

Tort — Damages to property — Claim by holder of temporary occupation licence.

Land laws — Temporary occupation licence — Rights of holders.

This was an appeal against the judgment of the High Court ([1966] 2 M.L.J. 24) dismissing an appeal from the president, sessions court, awarding damages to the plaintiff-respondent for the loss and damage to his property. The plaintiff was the holder of a temporary occupation licence giving him the right to occupy land and pluck coconuts from trees on the land. The defendant was subsequently given a temporary occupation licence in respect of the land for the purpose of rearing poultry. The defendant entered on the land and cut down some trees on it. The plaintiff bought an action against the defendant and was awarded $2,000 damages.

Held: as the respondent was not the owner of the trees which were not planted by him, he was not entitled to claim damages for loss of the trees; all he was entitled to was loss of income from the coconut trees as the licence was to pluck coconuts only and therefore the amount of damages should be reduced from $2,000 to $86.

FEDERAL COURT.

Raja Abdul Aziz for the appellant.

V. Oorjitham for the respondent.

Cur. Adv. Vult.

Barakbah L.P.: This is an appeal by the defendant against the judgment of a judge of the High Court, Kuala Lumpur, dated 21st February, 1966, dismissing an appeal against the decision of the president, sessions court, Kuala Lumpur, dated 25th February, 1965, awarding damages in the sum of $2,000 to the plaintiff for loss and damage to his property.

The facts are simple. In 1956 the respondent, that is the plaintiff, became the holder of a temporary occupation licence of a small plot of land for a house site on Government land which had an area of about 1½ acres situated at Kampong Kepong. On the said land there were some fruit trees and 73 coconut trees. The respondent also held a licence to pluck coconuts from 34 trees. He was always late in renewing his licence and in 1964 the temporary occupation licence was renewed on 2nd August, 1964 (Exhibit P.3) and the licence for plucking coconuts on 19th August, 1964 (Exhibit P.4B).

On 8th August, 1964, a temporary occupation licence in respect of the said land was given to the appellant for the purpose of rearing poultry. According to the respondent, which was not disputed, on 23rd August, 1964, the appellant entered the said land and cut down 16 coconut trees, 4 rambutan trees, 4 jackfruit trees and 2 guava trees. The respondent therefore claimed $2,000 as damages for loss of the trees including income derived therefrom.

As the respondent was not the owner of the trees which were not planted by him, in my opinion, he was not entitled to claim damages for loss of the trees. In fact, one of the conditions of the temporary occupation licence was that planting of permanent crops was forbidden. All that he could do was to claim damages for loss of income from the coconut trees as the licence was to pluck coconuts only. According to rule 40(iii) of the Land Rules, 1930, under the heading of "Temporary Occupation of State Land":—

"every such licence shall expire not later than the 31st day of December of the year in respect of which it is issued."

In the present case both the respondent and the appellant had temporary occupation licences of the same piece of land, the former to pluck coconuts and the latter to rear poultry. The temporary occupation licences for both of them were for one year only, expiring on 31st day of December and as the appellant started to cut down the coconut trees on 23rd August, 1964, in my view, the respondent could claim the loss of income only from that date till 31st December, 1964, which would be 4 months and 9 days. It is not a disputed fact that the respondent earned $20 per month from the sale of the coconuts and the loss of income would therefore be about $86.